

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GEORGIA SOUTHWESTERN
RAILROAD, INC., a Corporation,

Plaintiff,

vs.

AMERICUS C. MITCHELL, JR.,
an Individual,

Defendant.

CASE NO. 2:06cv3-B

RESPONSE TO SHOW CAUSE ORDER AND
SUBMISSION IN OPPOSITION TO
PLAINTIFF'S MOTION TO AMEND COMPLAINT OUT OF TIME

NOW COMES AMERICUS C. MITCHELL, JR., the defendant herein, by and through his attorneys, and, in response to this Honorable Court's *Order to Show Cause* why plaintiff's *Motion for Leave to Amend Complaint* should not be granted, states as follows:

1. Pursuant to this Court's *Uniform Scheduling Order* issued on March 31, 2006, any motions to amend the pleadings were due to be filed on or before June 15, 2006. Therefore, plaintiff's motion to amend its complaint is filed almost three months out of time.

2. Plaintiff's alleged discovery of its "additional claims for loss of use of the railway" was made during the depositions of witnesses that it tendered as its corporate representatives under *FRCP 30(b)(6)* and does not provide a sufficient basis to allow leave to amend its complaint out of time. Plaintiff had every opportunity to plead claims within the scope of its knowledge at the time its complaint was filed and may not now legitimately contend that it discovered additional claims during the course of the deposition of its own

corporate representative.

3. The granting of plaintiff's motion would necessitate additional discovery by:
 - a) Requiring the plaintiff's corporate representatives to be deposed again regarding the specific elements and amount of damages that it intends to claim for loss of use;
 - b) Requiring the testimony of additional expert witnesses, specifically, economists to testify as to the value of damages that plaintiff intends to claim for loss of use.

4. Furthermore, plaintiff had a duty to investigate all elements of damages claimed, as this information was requested in the *Defendant's Interrogatories to Plaintiff* filed on April 5, 2006, well in advance of the deadline imposed by this Court for amending the pleadings.

WHEREFORE, THE PREMISES CONSIDERED, the defendant respectfully requests that this Court deny plaintiff's Motion for Leave to Amend its Complaint.

Respectfully submitted,



DAVID E. ALLRED
D. CRAIG ALLRED
Attorneys for Above-Named Defendant

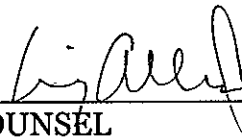
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CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of September, 2006 filed the foregoing *Response to Show Cause Order and Submission In Opposition to Plaintiff's Motion to Amend Complaint Out of Time* with the Clerk of the Court for the United States District Court for the Middle District of Alabama, Northern Division, using the CM/ECF system, which will send notification of such filing to:

Adrian D. Johnson, Esq.
PARNELL & CRUM, P.A.
Post Office Box 2189
Montgomery, Alabama 36102-2189



OF COUNSEL